

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN KELLY, ALISON LOPEZ, MICHAEL :
SALAZAR, DENISE AMIRANTE and PETER :
ZIEGERHOFER, on behalf of themselves and : Civil Action No.: 08 CV 8708 (CS)
others similarly situated, :
 :
 :
Plaintiffs, : NOTICE OF SETTLEMENT OF
 : CLASS ACTION LAWSUIT
v. :
 :
 :
BLT STEAK LLC and RITZ-CARLTON :
HOTEL COMPANY LLC, d/b/a RITZ :
CARLTON WESTCHESTER, :
 :
 :
Defendants. :
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TO: **ALL HOURLY PERSONS WORKING IN THE CLASSIFICATIONS OF CAPTAIN, BARTENDER, RUNNER/SERVER/WAITER, BARISTA OR BANQUET SERVER THAT WERE EMPLOYED BY THE RITZ-CARLTON HOTEL COMPANY LLC AT THE RITZ-CARLTON WESTCHESTER HOTEL LOCATED IN WHITE PLAINS, NY AT ANYTIME BETWEEN JANUARY 1, 2007 AND JANUARY 31, 2010 THAT WORKED AT THE BLT STEAK RESTAURANT AND/OR BANQUETS AND/OR SPECIAL EVENTS AT THE HOTEL.**

PLEASE READ THIS NOTICE CAREFULLY

You may be a class member who is entitled to receive money under a proposed collective/class action settlement of a lawsuit that is being resolved by the parties to avoid the further expenses and inconvenience of litigation. You should read this Notice carefully.

The Defendants deny any wrongdoing and have agreed to settle this matter to avoid the further expense and inconvenience of litigation. Therefore, you are encouraged to participate in this settlement and you will not be retaliated against if you claim your share of this \$330,000.00 settlement.

- If you have any questions regarding this Notice, or questions concerning the calculation of your share of the settlement, contact Class Counsel, D. Maimon Kirschenbaum, Joseph, Herzfeld, Hester & Kirschenbaum LLP, 757 Third Avenue, New York, NY 10017; (212) 688-5640; fax (212) 688-2548.

IMPORTANT DEADLINES:

- **Last Day To “Opt-Out” Of The Settlement Class:** _____ [45 days after mailing of the notice of the Settlement]
- **Last Day To Object To The Settlement:** _____ [45 days after mailing of the notice of the Settlement]

INTRODUCTION

A collective/class action was brought against Defendants which raises claims of alleged, among other things, unpaid wages, overtime, gratuities and tips. The Defendants denied any and all wrongdoing and liability. Despite the Defendants' denial of wrongdoing, the parties to the lawsuit reached a settlement, in order to avoid the expense and inconvenience of litigation, which has been granted preliminary approval by the United States District Court for the Southern District of New York. This Notice informs you about your rights and options under the settlement.

If finally approved, the settlement will resolve all claims, asserted and unasserted, arising out of and related to the lawsuit, including but not limited to any claims for any unpaid wages, overtime, gratuities, tips, interest and/or penalties under state and federal law. A hearing will be held _____ at ____:00 ____a.m. before the Honorable Cathy Seibel, United States District Judge of the United States District Court for the Southern District of New York, in Courtroom _____, at the United States District Courthouse, 300 Quarropas St., White Plains, NY 10601-4150, to address whether a settlement of claims against Defendants is fair and reasonable and should be approved.

If you do not choose to Opt-Out of the settlement class, you will be bound by the terms of this Settlement.

WHAT IS A CLASS ACTION?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as “class representatives,” file a lawsuit asserting claims on behalf of the entire class.

WHAT IS THE PURPOSE OF THIS NOTICE?

Judge Seibel has ordered that this Notice be sent to you because you may be a class member. The purpose of this Notice is to inform you:

- Of your right to money under the settlement;
- That the settlement class has been certified and that if you do not opt-out of the settlement class, you will be bound by the terms of a settlement agreement and will release your right to sue Defendants for, among other claims, unpaid wages, overtime, gratuities, tips, interest and/or penalties during the time you were a class member;

- Of your right to “opt-out” of the settlement class and not be bound by the Court’s judgment in this matter and the terms of the settlement agreement;
- Of your right to file objections to the settlement.

WHAT IS THIS CASE ABOUT?

On or about October 10, 2008, five servers formerly employed by the Ritz-Carlton Hotel Company LLC filed this class/collective action lawsuit against Defendants in the United States District Court for the Southern District of New York, Civil Action No. 08 CV 8708. The lawsuit alleges that Defendants violated federal and state labor laws governing the payment of wages, overtime, gratuities and tips. Such laws include the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*, New York Labor Law §§ 196-d, 650 *et. seq.* and relevant sections of N.Y.C.R.R. On January 30, 2009, the Defendants responded to the lawsuit and denied all allegations of wrongdoing and liability.

WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

The parties have agreed to settle the lawsuit for \$330,000.00 (including attorneys’ fees and expenses, and enhancement fees to the named plaintiffs who played an integral part in the commencement and prosecution of the lawsuit) to avoid the expense and inconvenience of litigation. The total sum of \$330,000.00 will be paid on or before 30 days following entry of final order by the Court approving the settlement.

Monetary Payment

If the settlement is given final approval by the Court, the maximum amount that Defendants will have to pay is \$330,000.00. If the Court also approves the payments set forth below, the following payments and expenses will be deducted from the \$330,000.00 prior to distribution of the settlement funds to the qualified class members:

- **Enhancement Fees:** If the Court approves such payment, \$4,000.00 will be paid to Class Representative Kevin Kelly, \$3,000 to Class Representatives Peter Ziegerhoffer, and \$1,500.00 will be paid to Class Representatives Denise Amirante, Michael Salazar, Allison Lopez, and opt-in Plaintiff David Noeth. These payments are made because these individuals provided many hours of service to the class by helping Class Counsel formulate claims and by providing documents to support the case.
- **Attorneys’ Fees:** Class Counsel will apply to the Court for attorneys’ fees and costs in the amount of 30.00% of the total class recovery which amounts to \$99,000.00. The amount requested is lower than the 33.33% agreed to by the Class Representatives. Furthermore, given the countless hours Class Counsel spent in pursuing this case on behalf of the Class Members, the risks that Class Counsel took that no fees would be recovered, and the result achieved for the Class Members, the amount requested is fair and reasonable.

If the Court approves these payments, after these deductions, the remaining \$220,000.00 in settlement funds will be distributed according to the method set forth in the "How Will My Share Be Calculated" section, below.

Dismissal of Case and Release of Claims

In exchange for the payment set forth above, the lawsuit will be dismissed with prejudice, and the qualified class members will fully release and discharge Defendants from any and all claims and causes of action for unpaid wages, failure to pay minimum wage and overtime, failure to pay tips and gratuities, failure to pay a "spread of hours" premium, illegal retention of tips and/or gratuities, and all other claims and causes of action that were or could have been asserted in the lawsuit under the FLSA, or state wage and hour laws, up to and including the date of final court approval of the settlement which is projected to occur on or about _____, 2010. **It is very important that you understand the terms of the release. If you have any questions concerning the release of your claims against Defendants, or questions concerning the calculation of your shares of the settlement fund, you may wish to contact Class Counsel regarding the scope of the release.** When the claims for unpaid wages, failure to pay the minimum wage and overtime, failure to pay tips or gratuities, failure to pay a "spread of hours" premium, illegal retention of tips are dismissed with prejudice, that means the Court will not consider any claims any further; in other words, the case is over. When claims are released, that means no one covered by the release can sue Defendants over those claims.

WHAT ARE YOUR OPTIONS?

You have several options. Make sure you read this section carefully.

1. Participate in the Settlement:

If you are a class member and do not opt-out of this settlement, you will recover your share of the settlement funds.

2. Opt-Out of the Settlement Class:

If you do not want to participate in the settlement, or you want the right to pursue your own lawsuit which will be defended by the Defendants, you must opt-out of the settlement by _____, 2010. If you do not opt-out, you will be bound by the terms of this settlement. To opt-out, you must send a letter which states clearly your intent to opt-out, postmarked no later than _____, 2010. You must include your name, social security number and the period for which you worked for the Ritz-Carlton Hotel Company LLC in a class position. If you choose to opt-out, send your letter to:

<p>Class Counsel: D. Maimon Kirschenbaum Joseph, Herzfeld, Hester & Kirschenbaum LLP 757 Third Avenue New York, NY 10017 Tel (212) 688-5640; fax (212) 688-2548</p>

Defense Counsel:
Michael Volpe
VENABLE LLP
Rockefeller Center
1270 Avenue of the Americas, 25th Floor
New York, New York 10020
Telephone: (212) 307-5500
Facsimile: (212) 307-5598

3. Objecting to the Settlement:

If you wish to comment on, or object to, the proposed settlement, the proposed plan of allocation, or the application for attorneys' fees and costs, you may do so. Written comments or objections must be postmarked by _____, 2010, and sent to both addresses below. You are not required to submit a comment or objection.

Class Counsel:
D. Maimon Kirschenbaum
Joseph, Herzfeld, Hester & Kirschenbaum LLP
757 Third Avenue
New York, NY 10017
Tel (212) 688-5640; fax (212) 688-2548

Defense Counsel:
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HOW WILL MY SHARE BE CALCULATED IF I PARTICIPATE?

Each qualified class member will receive a share of the \$220,000.00 in settlement funds that remain after the deductions of the enhancement fees and attorney's fees and costs listed above. Your share will depend on the number of hours and position you worked within the applicable class period.

Distribution Allocation and Examples of Recovery

Class Counsel will calculate your share as follows:

- (1) each employee will be classified by Class Counsel as either a (1) Captain (2) Bartender (3) Runner/Server/Waiter (4) Barista or (5) Banquet Server, according to the last job held while employed by Ritz-Carlton;
- (2) each Captain and/or Bartender will receive 9 points for each hour that the employee recorded in the Defendants' records in the years from the beginning of the class period through December 31, 2008, and 3 points for each hour from January 1, 2009 through May 31, 2009;
- (3) each Runner and/or Server and/or Waiter will receive 6 points for each hour that the employee recorded in the Defendants' records in the years from the beginning of the class period through December 31, 2008, and 2 points for each hour from January 1, 2009 through May 31, 2009;
- (4) each Barista will receive 3 points for each hour that the employee recorded in the Defendants' records in the years from the beginning of the class period through December 31, 2008, and 1 point for each hour from January 1, 2009 through May 31, 2009;
- (5) each Banquet Server will receive 3 points for each hour that the employee recorded in the Defendants' records in the years from the beginning of the class period through October 31, 2008, and 1 point for each hour from November 1, 2008 through May 31, 2009;
- (6) the NSA shall be divided by the aggregate number of points accrued by all of the class members individually during the recovery period ("Point Value");
- (7) for each qualified class member, the number of points the qualified class member accrued shall be multiplied by the Point Value; and
- (8) Defendants will then subtract applicable payroll deductions from such amounts.

Thus, if you remain in the class, you will receive your pro-rata share of the \$220,000.00 based on the number of hours you worked for Defendants and your position. For example, if your total number of hours worked equaled 2% of the aggregate number of hours worked by all of the class members, you would receive \$4,400.00.

In general, the more hours you worked for Defendants, the more money you are likely to receive. However, these are just examples to illustrate how the calculation formula might be used to distribute the settlement funds. The amount you will recover will change somewhat according to the number of class members who participate in the settlement.

Uncashed Checks

You will have 90 calendar days after mailing by the Defendants' Counsel to cash your settlement check. If you do not cash your settlement check within the 90 day period, your settlement check will be void and a stop-payment will be placed. If this happens, Defendants will wait another 275 days for you to request a replacement check. If you do not request a replacement check by that time, the money reverts back to Defendants.

EXAMINATION OF PLEADINGS AND PAPERS / ADDITIONAL INFORMATION

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you are advised to refer to the underlying documents and papers on file with the Court. This file may be inspected during the hours of each Court business day at the Office of the Clerk of the Court, United States District Courthouse, 300 Quarropas St., White Plains, NY 10601-4150.

If you have questions about this Notice, or want additional information, you can contact the D. Maimon Kirschenbaum, at Joseph, Herzfeld, Hester & Kirschenbaum LLP, 757 Third Avenue, New York, NY 10017; tel (212) 688-5640; fax (212) 688-2548.